

Application No. 10/661,640
Amendment Dated May 9, 2007
Response to Final Office Action dated February 9, 2007

REMARKS

Status of Claims

Claims 22-24, 26-32, 34-36, and 38-40 are currently amended.

Claims 1-21 and 25 are canceled.

Claims 22-24 and 26-40 are pending.

Claim Rejections Under 35 U.S.C. § 102(b) - Zabara '807

Claims 22-24, and 26-40 are rejected in the Office Action under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,025,807 ("Zabara '807"). It is said that Zabara '807 is considered to teach all of the structure of these claims. In Zabara '807, electrodes 22, 24 are coupled to only one branch of the vagus nerve 26 via leads 18, 20 (col. 5, lines 34-36; Fig. 3). Only one pulse generator 10 is disclosed by Zabara '807, whereas claims 29, 34, and 38 require two pulse generators. Moreover, as currently amended, independent claims 22, 29, 34, and 38 require at least two electrodes adapted to couple to the left and right branches of the vagus nerve, respectively, in a synchronous or asynchronous fashion. The structural elements are not disclosed by the cited reference. For at least the foregoing reasons, the cited reference does not anticipate claims 22, 29, 34, and 38, or claims 23-24 and 26-28, 30-33, 35-37, and 39-40, which depend variously therefrom.

Double Patenting

Claims 22-24 and 26-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,622,047. Applicants are willing to file an appropriate terminal disclaimer. Applicants respectfully request that this requirement be held in abeyance until such time as claims in this application are allowable but for this double patenting rejection.

Claims 22-24 and 26-40 are also rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22-31 of co-pending U.S. Patent Application No. 10/661,641. Applicants are willing to file an appropriate terminal disclaimer in this or the allegedly conflicting application. Applicants respectfully request that this requirement be held in

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abeyance until such time as claims in this application are allowable but for this double patenting rejection.

Request for Removal of Finality of Office Action

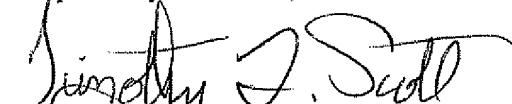
Applicants believe that the claims as currently amended are in condition for allowance. In the event that any claim is not deemed allowable, Applicants respectfully request that the finality of the February 9, 2007 Office Action be withdrawn. Because this Office Action is a first office action final rejection after filing a Request for Continued Examination (RCE), Applicants have not had an adequate opportunity to establish a productive exchange between the Examiner and the Applicant to identify common ground for agreement.

Conclusion

Entry of the amendments and reconsideration of the application and withdrawal of the objections and rejections are requested. Applicants respectfully request allowance of all pending claims. The Examiner is invited to contact the undersigned representative to facilitate resolution of any remaining issues.

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event that an extension of time is necessary to allow consideration of this paper, such extension is hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Deposit Account Number 503053 of Cyberonics, Inc., Houston, Texas.

Respectfully submitted,



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